

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

BRENDAN NASBY,

Petitioner,

vs.

E.K. McDANIEL, *et al.*,

Respondents.

3:07-cv-0304-ECR-RAM

**ORDER**

Before the Court is petitioner's Motion to Extend Time (ECF No. 68) and Motion To Appoint Counsel (ECF No. 69). In seeking the additional time to reply, petitioner explains that he is housed in Ely State Prison on a lock-down status with his access to legal materials extremely limited. Good cause appearing, the motion for time shall be granted.

Petitioner also seeks appointment of counsel. Petitioner has been represented by at least three separate attorneys in pursuit of this matter. His petition was denied, the denial reconsidered, the matter then stayed to permit exhaustion in state court, and has now been reopened. His most recent counsel withdrew when the original appeal was pending. Now, with respondents's answer having been filed, petitioner seeks appointment of another attorney.

There is no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428

1 (9th Cir. 1993). The decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801  
2 F.2d 1191, 1196 (9th Cir. 1986), *cert. denied*, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d  
3 1228, 1234 (9th Cir.), *cert. denied*, 469 U.S. 838 (1984). However, counsel must be appointed if the  
4 complexities of the case are such that denial of counsel would amount to a denial of due process, and  
5 where the petitioner is a person of such limited education as to be incapable of fairly presenting his  
6 claims. See *Chaney*, 801 F.2d at 1196; *see also Hawkins v. Bennett*, 423 F.2d 948 (8th Cir. 1970).  
7 The surviving claims in this case are not especially complex issues of ineffective assistance of  
8 counsel and petitioner has demonstrated that he has some assistance from prison law clerks and is  
9 able to present himself before the Court effectively. The motion shall be denied.

10 **IT IS THEREFORE ORDERED** that petitioner's motion for extension of time  
11 (ECF 68) is **GRANTED**. The reply brief shall be due sixty (60) days after entry of this order.

12 **IT IS FURTHER ORDERED** that the motion for appointment of counsel (ECF No.  
13 69) is **DENIED**.

14 DATED this 18<sup>th</sup> day of June 2012.

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16 UNITED STATES DISTRICT JUDGE